

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

ALEX NGUYEN
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Complainant,

v.

CELLCO PARTNERSHIP &
AFFILIATED ENTITIES d/b/a
VERIZON WIRELESS

Defendant.

File No. _____

COMPLAINT

July 26, 2016

SUMMARY

I, Alex Nguyen, bring this complaint against Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless (“Verizon”) for violating 47 USC §§ 201(b) and 202(a); 47 CFR §§ 8.3, 8.5, 8.11, and 27.16; and a 2012 Order and Consent Decree¹ (“2012 Order and Consent Decree”) by abusing its position as gatekeeper to interfere with my ability to use the devices and applications of my choice and edge providers' ability to make the devices and applications of their choice available to me.

47 CFR § 27.16(b) states that licensees of spectrum in the Upper 700 MHz Band C Block shall not “deny, limit, or restrict the ability of their customers to use the devices and applications of their choice.” However, Verizon both blocked customers from ordering new SIM cards for third-party devices and also imposed discriminatory pricing on customers who brought their own devices and used existing SIM cards.² As the Commission recognized, the openness rules in 47 CFR § 27.16 “overlap in significant parts” with the openness rules adopted by the *2015 Open Internet Order*,³ and Verizon's conduct that began or continued after June 12, 2015 additionally violated 47 USC § 202(a) and 47 CFR §§ 8.5 and 8.11.

47 CFR § 27.16(e) states that no C Block licensee may “disable features on handsets it provides to customers,” the *700 MHz Second Report and Order* requires C Block licensees to allow “customers, device manufacturers, third-party application developers, and others to use or

1 Cellco Partnership d/b/a Verizon Wireless, File No. EB-11-IH-1351, Acct. No. 201232080028, FRN 0003290673, Order and Consent Decree, 27 FCC Rcd. 8932 (2012)

2 Shawn De Cesari. *[Shocker] Even After Launching The Nexus 6, Verizon Still Won't Officially Activate One That Wasn't Purchased From The Carrier.*
<http://www.androidpolice.com/2015/03/28/shocker-even-after-launching-the-nexus-6-verizon-still-wont-officially-activate-one-that-wasnt-purchased-from-the-carrier/>

3 30 FCC Rcd. 5612 ¶ 39 (2015)

develop the devices and applications of their choice,”⁴ and the *2012 Order and Consent Decree* affirms that Verizon may not “explicitly or implicitly” request that applications be made unavailable to customers.⁵ However, Verizon interferes with customers’ ability to use the devices and applications of their choice and edge providers’ ability to make the devices and applications of their choice available to customers. For example, Verizon disables (or compels Apple to disable) Embedded Apple SIMs built into devices it provides to customers.⁶ Similarly, Verizon compelled Samsung to preload Verizon-backed Android Pay on its devices and blocked Samsung from preloading Samsung Pay.⁷ Verizon’s conduct that began or continued after July 31, 2012 additionally violated the *2012 Order and Consent Decree*. Verizon’s conduct that began or continued after the *2015 Open Internet Order* took effect on June 12, 2015 additionally violated 47 USC §§ 201(b) and 202(a) and 47 CFR §§ 8.5 and 8.11.

47 CFR §§ 8.3 and 27.16 require transparency in network management practices. However, Verizon misleads and deceives customers by inaccurately stating third-party devices that are compatible with its network are not. Moreover, the carrier offers vague and specious allegations (instead of specific explanations) for denying network access. For example, Verizon blocked Asus Nexus 7 tablets for 22 weeks because of a vague “systems issue” it allegedly uncovered,⁸ but Verizon neither specified the “systems issue” it alleged existed nor provided any

4 22 FCC Rcd. 15361 ¶ 195 (2007)

5 27 FCC Rcd. 8940 ¶ 13 (2012)

6 Ina Fried. *Latest iPad Pro Makes It Even Easier to Switch Wireless Carriers*. <https://recode.net/2016/03/22/latest-ipad-pro-makes-it-even-easier-to-switch-wireless-carriers/> [“Verizon, meanwhile, will require a separate SIM card and disable the built-in embedded Apple SIM on the iPads it sells.”]

7 Walt Mossberg. *Mossberg: Samsung’s New Galaxy S7 Phones Are Beautiful*. <https://recode.net/2016/03/08/mossberg-samsungs-new-galaxy-s7-phones-are-beautiful/> [“Samsung says Verizon barred including Samsung’s browser and Samsung Pay out of the box.”]

8 David Ruddock. *Verizon: Google, Asus Have Opted To Wait Until Nexus 7 Gets KitKat To*

evidence that this alleged “systems issue” harmed its network.⁹

Wherefore, I respectfully ask the Commission to:

- Declare that Verizon willfully and repeatedly violated 47 USC §§ 201(b) and 202(a); 47 CFR §§ 8.3, 8.5, 8.11, and 27.16; and the *2012 Order and Consent Decree*,
- Ensure edge providers can independently certify devices and applications,
- Ensure Verizon doesn't interfere with customers' ability to use the devices and applications of their choice or edge providers' ability to make the devices and applications of their choice available to customers,
- Require Verizon to equalize pricing between purchasing a device through Verizon and bringing your own device,
- Order Verizon to offer SIM cards for postpaid service separately from devices (without requiring customers to check a device identifier against a whitelist) at its online store, retail stores, and by phone,
- Order Verizon to widely and prominently advertise that it will give SIM cards to customers who bring their own devices,
- Evaluate whether Verizon possesses the basic character qualifications to obtain additional Commission licenses or authorizations,
- Award damages, and
- Initiate an investigation of Verizon's conduct and impose forfeitures payable to the

Certify For Use On Network, “Systems Issue” With 4.3 To Blame.

<http://www.androidpolice.com/2013/11/06/verizon-google-asus-have-opted-to-wait-until-nexus-7-gets-kitkat-to-certify-for-use-on-network-systems-issue-with-4-3-to-blame/>

9 Ricardo Bilton. *How convenient: Verizon announces its own 7-inch tablet, even as it locks the Nexus 7 in certification limbo.* <http://venturebeat.com/2013/11/06/how-convenient-verizon-announces-its-own-7-inch-tablet-even-as-it-locks-the-nexus-7-in-certification-limbo/>

Treasury that are sufficient to deter the carrier from continuing an over decade-long pattern of abusing its position as gatekeeper to limit consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission.

Recognizing that “the evidence necessary to apply the open Internet rules is predominantly in the possession of the broadband provider”¹⁰ and that complainants are likely to be consumers with limited resources,¹¹ the Commission adopted formal complaint rules in 47 CFR §§ 8.12–8.17 that are less burdensome on complainants than the rules in 47 CFR §§ 1.720–1.736:

The section 208 rules, for example, require complainants to submit information designations, proposed findings of fact and conclusions of law, and affidavits demonstrating the basis for complainant’s belief for unsupported allegations and why complainant could not ascertain facts from any source. *See, e.g.*, 47 C.F.R. §§ 1.721(a) (5), (6), (10). The open Internet formal complaint rules do not contain similar requirements.¹²

Although the Commission recognized that the openness rules in 47 CFR § 27.16 “overlap in significant parts” with the openness rules adopted by the *2015 Open Internet Order*, when the Commission adopted the *700 MHz Second Report and Order* in 2007, it applied the existing formal complaint rules in 47 CFR §§ 1.720–1.736.¹³

Pursuant to 47 CFR § 1.3, the Commission agreed to waive provisions of 47 CFR §§ 1.721(a) (5), (6), (10) and 1.735(c) for this complaint.¹⁴ Still:

10 25 FCC Rcd. 17988 ¶ 157 (2010)

11 30 FCC Rcd. 5713 ¶ 252 (2015)

12 *Id.* note 652

13 22 FCC Rcd. 15373–15374 ¶ 229 (2007) [“A person or entity who believes that the C Block licensee’s refusal to attach a proposed device or application is a violation of the rules we adopt here may file a complaint pursuant to the Commission’s existing enforcement rules, including the Commission’s formal and informal complaint processes, where applicable.”]

14 See the February 2, 2016 letter from Rosemary McEnery (Deputy Chief, Market Disputes

- Pursuant to 47 CFR § 1.720(a)–(c) and 1.721(a)(5), the complaint includes detailed explanations of how and when Verizon violated the Communications Act and Commission orders and regulations, the complaint contains facts that are sufficient to constitute violations, and all material facts are supported by relevant documentation or affidavit.
- Pursuant to 47 CFR § 1.721(a)(6), the complaint contains legal analysis relevant to the claims and arguments set forth.

Included with the complaint are:

- A transmittal letter, Formal Complaint Intake Form, proof of paying the formal complaint filing fee, and certificate of service,¹⁵
- News articles, customer testimonials, and other documents upon which I intend to rely to support the facts alleged and legal arguments made in the complaint,
- Excerpts from the March 10, 2016 episode of the Ctrl-Walt-Delete show with technology journalists Walt Mossberg and Nilay Patel,
- Correspondence with Verizon and the Commission, and
- The first set of interrogatories from me to Verizon.

I've provided copies of the complaint to Verizon via e-mail and to the Enforcement Bureau and Office of the Secretary via ECFS and e-mail.

Resolution Division) to Alex Nguyen and David Haga (Assistant General Counsel, Verizon).
 15 12 FCC Rcd. 22524 ¶ 56 (1997) [“We also require the complainant to attach to each copy of the intake form, a photocopy of its fee payment (check, etc.) as well as a certificate of service.”]

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